IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 494 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARTIBEN BIPINCHANDRA SHAH & 1

Versus

BIPINCHANDRA KASTURCHAND SHAH

Appearance:

PARTY-IN-PERSON for Petitioners

MR DEEPAK M SHAH for Respondent No.1 (appointed)

MR ST MEHTA APP for Respondent No.2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/10/2000

ORAL JUDGEMENT

The petitioners herein are the wife and the minor daughter of the respondent no.1. The petitioners challenge the judgment and order dated 31st May, 1986, passed by the learned Judicial Magistrate, First Class,

Limbdi, in Criminal Misc. Application No. 70/84.

It appears that the petitioner no. 1 was married to the respondent no.1 in the year 1977 and the petitioner no. 2 was born to the petitioner no.1 and the respondent no.1 on 23rd April, 1978. However, the relations between the petitioner no.1 and the respondent no.1 were strained. The petitioner no.1, therefore, had to leave her matrimonial house along with the minor daughter and she went to reside with her parents. She filed Criminal Misc. Application No. 52/81 for maintenance under section 125 CRPC in the court of the learned Judicial Magistrate, First Class, Limbdi. It was alleged that she had to leave her matrimonial house under the compelling circumstances. The respondent no.1 was a Bank employee and had a share in the family business of a grocery shop. Considering the evidence on record, the learned Magistrate held that though the petitioner no.1 was qualified, she did not have an employment. It was proved that the respondent no. 1 was a Bank employee. However, the petitioner no.1 failed to prove that the respondent no.1 had a share in the family business as alleged. Considering the evidence on record, the learned Magistrate, under his judgment and order dated 31st August, 1982, awarded monthly maintenance of Rs.400/- to the petitioner no.1 and of Rs. 200/- to the respondent no.2-the minor daughter. Feeling aggrieved, both the parties preferred Criminal Revision Applications before this court being Criminal Revision Application No. 538/82 by the respondent no.1 and Criminal Revision Application No. 644/82 by the petitioners. Both the applications were dismissed by this court (Coram : Mr.Justice A.P.Ravani, as he then was), under its judgment and order dated 17th August, 1983. Considering the application for enhancement made by the petitioners, the court observed that - " Now, as far as the Revision Application No. 644/82 filed by the petitioner-wife and minor daughter is concerned, it is true that the order of maintenance awarded to them is surely on the lower side. But I do not think that the trial court had failed to take into consideration all the relevant aspects. It has not been pointed out to me as to why the amount awarded by the trial court requires to be enhanced. .... If there are changes in the circumstances of the petitioner-wife and that of minor daughter, she can move the trial court for enhancement of the maintenance at the appropriate stage. If and when any such application is made before the trial court and if appropriate grounds are made out, I am sure, the trial court will consider such an application on merits." Pending the above proceedings, the respondent no. 1 made an application

being Hindu Marriage Petition No. 215/81 in the City Civil Court, Ahmedabad, praying for annulment of marriage under section 13 of the Hindu Marriage Act, 1951. Pending the said petition, by order dated 16th March, 1982, made below application Ex. 9, the respondent no.1 was directed to pay maintenance pendente-lite of Rs.275/PM to the petitioner no.1 wife and of Rs.125/- PM to the petitioner no.2 - minor daughter. The said petition was dismissed on 10th August, 1983. It appears that feeling aggrieved, the respondent no.1 husband has preferred First Appeal No. 2141/84 before this court. Pending the said appeal, on an application made by the petitioners being Civil Application No. 3247/84, by order dated 1st September, 1984, the respondent no.1 husband is directed to pay monthly maintenance of Rs.450/- to the petitioner no.1 wife and of Rs.300/- to the petitioner no.2 minor daughter. The said amount is inclusive of the maintenance awarded in Criminal Misc. Application No. 52/81. It appears that since the above referred orders of maintenance made in the criminal as well as in the civil proceedings, the respondent no.1 was promoted as a Junior Officer in the Bank and his monthly income had increased. The petitioners, therefore, filed Misc. Criminal Application No. 70/84 in the court of the learned Judicial Magistrate, First Class, Limbdi, for enhancement of maintenance under section 127 CRPC. In the said proceedings, it was proved that the respondent no.1 had earned promotion and his salary was Rs. 3571/-. He had also borrowed loan from the Bank and purchased a residential flat in the city of Ahmedabad. Considering the increase in the salary of the respondent no.1, the learned Magistrate, under his judgment and order dated 31st May, 1986, directed enhancement of Rs.25/- in the monthly maintenance of each of the petitioners. Feeling aggrieved, the petitioners have preferred the present petition.

It appears that pending this petition, the pay slips indicating the salary of the respondent no.1 for the month of August, 1988, March, 1989 and August, 1994 have been produced. In the month of August 1988, the total salary of the respondent no.1 was Rs.3996/-, and in the month of February 1989, it was Rs. 4339/-, while in the month of August 1994, its was 9045/-. This shows that there is a gradual increase in the salary of the respondent no.1 over the years. The learned Magistrate has accepted the fact that there has been an increase in the salary of the respondent no.1, however, has held that there is no increase in the expenses and accordingly ordered enhancement of maintenance to each of the petitioner by Rs.25/-.

In my view, the learned Magistrate has grossly erred in holding that there has been no increase in the expenses of the petitioners. It is established that the petitioner no.2 had by then started formal education, and over the years, she would require some expenditure to be incurred on school fees, uniform, stationery etc. Besides, the petitioners were not required to prove that there has been a gradual increase in the expenses of living also. The learned Magistrate, however, has not taken into consideration the gradual increase in the expenditure of living. Considering the total income of the respondent no.1 and the fact that he has no other liability except that he was living with his mother, the petitioners ought to have been awarded a monthly maintenance of Rs.1000/-. The maintenance amount could have been enhanced accordingly.

In view of the above discussion, the Revision Application is allowed. Each of the petitioners is awarded a monthly maintenance of Rs.500/- from the date of the application . This monthly maintenance shall include the interim maintenance of Rs.750/- awarded by this court in Civil Application No.3247/84 in First Appeal No. 2141/84. The respondent no.1 will pay the arrears of maintenance payable pursuant to this order on or before 28th February, 2001. The aforesaid amount of maintenance shall be paid by the respondent no.1 every month regularly commencing from 1st November, 2000. In the event the respondent no.1 is remiss in making regular payment of monthly maintenance, it would be lawful for the petitioners to approach the concerned Branch Manager of the Bank under whom the respondent no.1 is working and to request him to deduct the amount of maintenance from the salary of the respondent no.1 and to make payment of such amount directly to the petitioners by a cheque drawn in favour of the petitioner no.1. If such an application is made, the Branch Manager concerned shall make the payment accordingly. Rule is made absolute in the above terms. The parties shall bear their own costs.

(MS R.M.DOSHIT J)

JOSHI